

State of Arizona Game and Fish Department
Page 1 of 6



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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October 10, 2003

Dr. Jerry Pell
Office of Fossil Energy
U.S. Department of Energy
Washington, D.C 20585

Re: Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft
Environmental Impact Statement

Dear Dr. Pell:

The Arizona Game and Fish Department (Department) reviewed the Tucson Electric Power Company Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement (DEIS). We provide the following comments for your consideration.

The Department understands that Tucson Electric Power (TEP) has applied for a Presidential Permit with the Department of Energy (DOE) to build a double-circuit 345-kV transmission line on a single set of support structures from Sahuarita to Nogales, Arizona, extending across the U.S. international border to Santa Ana, Sonora, Mexico. The 140-foot tall support structures would consist primarily of the monopole towers, and would be located within an approximate 125-foot wide right-of-way (ROW). Lattice towers would be used in specific locations for engineering or environmental reasons. All proposed alternatives would cross U. S. Forest Service (USFS) [Tumacacori Ecosystem Management Area (EMA), Coronado National Forest] and Bureau of Land Management (BLM) land, requiring approval by both land management agencies (and a forest plan amendment) to proceed. We understand that the USFS and BLM have not yet determined their preferred alternative.

The TEP identified three potential transmission line corridors in the DEIS: a western corridor (DOE's and TEP's preferred alternative), central corridor, and crossover corridor. The western corridor and crossover corridor call for approximately 430 support structures over 65 miles, including 191-196 structures over 29 miles of the Coronado National Forest (CNF). These alternatives would permanently or temporarily disturb 226-274 acres of USFS land and create approximately 20 miles of new roads within the CNF, Tumacacori EMA. The crossover corridor would enter an Inventoried Roadless Area (IRA) within Peck Canyon on the CNF, and two structures would be located in the canyon bottom. No new roads would be created within the IRA as helicopters would be used to transport poles and string lines. The central corridor would cover approximately 57 miles (373 support structures), including 102 structures over 15 miles of the CNF. This alternative would permanently or temporarily disturb 128 acres of USFS land. The central corridor would follow or cross an existing right-of-way (ROW) for an estimated 43 miles

State of Arizona Game and Fish Department
Page 2 of 6

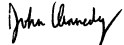
Dr. Jerry Pell
October 10, 2003
2

and would cross a higher percentage of previously disturbed ground, requiring fewer (14 miles) new roads within the CNF than the other two proposed routes.

The Department is concerned about this project and anticipated adverse impacts to wildlife resources. In addition, we question the overall purpose and need for the project. Of the action alternatives, we have fewer concerns with the central corridor than the western or crossover corridors. The Department's specific comments are included as an attachment to this letter.

We appreciate the opportunity to provide these comments on the DEIS. Please contact Laurie Averill-Murray, Habitat Specialist, at (520) 628-5982 ext. 550 or at the letterhead address if you have any questions regarding this letter.

Sincerely,



John Kennedy
Habitat Branch Chief

JK:aam

cc: Sue Kozacek, Acting Forest Supervisor, Coronado National Forest
Joan Scott, Habitat Program Manager, Region V, Tucson
Laurie Averill-Murray, Habitat Specialist, Region V, Tucson
Bob Broscheid, Project Evaluation Program Supervisor

Attachment

Comment No. 1

The EIS has been revised to include a more extensive explanation (in Section 1.2, Purpose and Need) of the roles of TEP and the Federal agencies in developing alternatives for the proposed project. In permit proceedings such as TEP's, where an applicant seeks permission for a specific proposed project to meet the applicant's specific purpose and need, the Federal agencies generally limit their review to alternatives similar to the one proposed, i.e., that is, alternatives that would meet the applicant's purpose and need. The agencies generally do not review alternatives that are not within the scope of the applicant's proposals. Similarly, the Federal agencies do not compel a permit applicant to alter its proposal or its purpose and need, but instead they decide whether a permit is appropriate for the specific proposal as the applicant envisioned it. It is not for the agencies to run the applicant's business or to compel an applicant to change its proposal: DOE evaluates the project as offered. Therefore, in an applicant-initiated process, the range of reasonable alternatives analyzed in detail is limited to those alternatives that would satisfy the applicant's purpose and need and that the applicant would be willing and able to implement, plus the no-action alternative. All of the alternatives analyzed in this EIS were either suggested by or similar to alternatives suggested by TEP.

This approach is particularly apt where, as here, the proposed action reflects a state's decision as to the kind and location of electrical infrastructure it wants provided within its boundaries. The ACC is vested with the authority to decide how it believes energy should be furnished within Arizona's borders, including the need for, the location of, and the effectiveness of transmission lines within its borders. See the discussion at Section 1.1.2 and 1.2.2 of the EIS with respect to the respective jurisdictions and authorities of the state and Federal agencies, and their relationship to this NEPA review. TEP's proposal has the dual purpose of addressing problems of electrical reliability in Santa Cruz County, Arizona, and crossing the border to eventually interconnect with the Mexican electrical grid. Alternatives that would not satisfy both elements of this dual purpose are not reasonable alternatives for the Federal agencies to consider in detail.

Thus, during the course of this NEPA review, the Federal agencies have considered alternative routes for TEP's proposed transmission line, but have not deemed feasible proposed alternatives that contemplate construction of

State of Arizona Game and Fish Department
Page 3 of 6

Arizona Game and Fish Department Comments on the Draft Environmental Assessment
for the Tucson Electric Power Company Sahuarita-Nogales Transmission Line

October 10, 2003

Purpose and Need

The purpose and need for DOE action is to determine whether it is in the public's best interest to grant TEP a Presidential Permit to construct, operate, and maintain a 345-kV transmission line crossing the U.S. international border. In response to several hours of blackouts in Santa Cruz County in 1999, the Arizona Corporation Commission (ACC) mandated that a backup source of power be built to alleviate future blackouts and keep up with increasing energy demands. TEP signed a contractual agreement with the local power company (Citizens) to respond to the ACC mandate.

1

The DEIS addresses the need to comply with the ACC mandate to supply reliable power to southern Arizona. However, the DEIS does not adequately address the need for a 65-mile, 345-kV transmission line. The ACC mandate, and the reliability and availability of power in Santa Cruz County, can likely be met through a less costly means, both environmentally and economically. While the proposed transmission line would be operated to transmit 500 MW, Citizens has committed to buying only 100 MW, which is a substantial increase over the current energy demands of Santa Cruz County. TEP anticipates sending the remaining 400 MW to Mexico. Additionally, upgrades have been made to the existing Santa Cruz County power supply since the original issuance of the ACC mandate, which may lessen the need for this action. These upgrades should be considered when addressing the purpose and need for this project.

Alternatives Considered

The DEIS does not explore all of the viable alternatives. CEQ regulations require agencies to consider all reasonable alternatives, even those not within the jurisdiction of the lead agency (40 CFR, 1502.14(c)). Other potential alternatives that should be explored include the following: 1) building a smaller (115-kV) powerline, 2) running a smaller powerline down an existing ROW, 3) building a new local power plant, 4) building a shorter powerline, 5) upgrading the existing powerline, 6) burying the powerline in sensitive areas, and 7) using alternative energy sources. Anyone of these options could alleviate concerns regarding environmental degradation, loss of scenic integrity, and cost.

2

In January 2002, ACC granted TEP and Citizens permission to build the proposed project in the Western Corridor, rejecting both a central and an easterly route. It is unclear how this decision affects the alternatives as set forth in this DEIS. Is the central route really a viable alternative if TEP has not received permission from the ACC for this route?

Comment No. 1 (continued)

power plants or transmission lines that differ in capacity from those that the ACC has directed TEP to construct.

As discussed in Section 2.1.5, upgrades to the local distribution system do not eliminate the need for the proposed second transmission line because this would not alleviate the reliability problem.

Comment No. 2

Section 2.1.5, Alternatives Considered But Eliminated From Further Analysis, explains the roles of the Federal agencies in developing alternatives for the proposed project. Where an applicant seeks a permit for a particular business project, such as the case with TEP's proposed project, the Federal agencies generally limit their review of alternatives to those that would satisfy the applicant's proposal and decide whether that proposal is or is not worthy of receiving a permit. The Federal agencies do not review alternatives that are not within the scope of the applicant's proposal. Similarly, the agencies do not direct the applicant to alter its proposal; instead, the agencies decide whether a permit is appropriate for the proposal as the applicant envisions it. It is not for the agency to run the applicant's business and to change the applicant's proposal, but only to evaluate the environmental effects of the applicant's business proposal as offered. Accordingly, the EIS evaluates a reasonable range of alternatives, which include the full spectrum of alternatives that would satisfy the applicant's proposal. The alternatives suggested by the commentor would not satisfy the applicant's proposal.

The Central Corridor remains a viable alternative for selection by the Federal decisionmakers, regardless of the rejection of this route by the ACC. However, implementation of the proposed project in the Central Corridor could not occur until TEP meets all regulatory requirements, including obtaining the necessary approval from the ACC.

Section 2.1.5 discusses alternatives that were considered but eliminated from detailed study, including those identified by the commentor. The Eastern Corridor was eliminated from further consideration in this EIS because of TEP's conclusion that the Eastern Corridor is technically infeasible. It is physically impossible to build it there, and reliability would

State of Arizona Game and Fish Department
Page 4 of 6

AGFD Comments on TEP DEIS
 October 10, 2003
 2

Cumulative Effects Analysis

- 3 The cumulative effects analysis lacks enough information to make comparisons among the various alternatives. The cumulative effects of past, present, and reasonably foreseeable future actions should be analyzed for each alternative, including the No Action alternative. This information is needed by all of the agencies involved in the decision-making process of this project to effectively determine the appropriate course of action.

Biological Concerns

- Powerline ROWs and roads fragment landscapes by creating linear openings or corridors within otherwise contiguous vegetation patches. The DEIS acknowledges some of the general concerns regarding powerline ROWs and roads, and offers mitigation measures to ameliorate these effects. Due to the long recovery time of arid lands, even with active restoration efforts, the best strategy is to avoid and minimize impacts if at all possible. From an environmental and wildlife resources standpoint, it is better to situate new roads and powerlines in previously disturbed areas rather than through contiguous and relatively pristine "habitat" patches. If the proposed powerline were built, a corridor along an existing ROW and/or through previously disturbed land would provide the least damaging route. Of the alternative corridors proposed in this DEIS, the central corridor would follow or cross an existing ROW over more distance, disturb fewer acres of forested land, and create fewer new roads on the CNF than the other two proposed corridors.

- 4 Habitat fragmentation is considered one of the leading causes of species endangerment and loss of biodiversity. Linear corridors (such as roads and ROWs) create an edge effect and often attract generalist species, frequently at the expense of more specialized or interior forest-dwelling species, thereby altering both plant and animal community composition. Some birds, such as raptors and brown-headed cowbirds, are found in higher densities in edge habitats (e.g., powerline ROWs) and use these linear corridors for nesting and foraging, as well as to expand into the surrounding landscape. These species affect the local vertebrate community through increased predation and brood parasitism. Non-native plants, such as Lehmann's lovegrass, often spread from disturbed areas (roadsides and powerline ROWs) to the surrounding landscape, thereby increasing the fine fuel load and altering the frequency and intensity of fire. Some animals avoid openings due to increased vulnerability to predation. Additionally, corridors used by people (which any linear corridor can lend itself to) can lead to increased harassment of wildlife, both purposefully through increased poaching and inadvertently through road kill or alteration of animal behavior. Many animals will alter their movement patterns to avoid contact with people.

We understand that TEP would mitigate for the creation of new roads within the CNF by closing all except those needed for powerline maintenance (i.e., administrative roads). Additionally, we understand that TEP would close one mile of existing roads (potentially including wildcat roads) within CNF for every one mile of proposed road to be used for operation and maintenance of the

also be an issue. (See Section 2.1.5 for further discussion of elimination of the Eastern Corridor.) Finally, it is noted that the corridors that were eliminated from detailed study would also have environmental impacts.

Comment No. 3

Table 5.1-4 has been added to Chapter 5 the Final EIS to provide a summary comparison of the cumulative impacts by resource area and identify any differences in cumulative impacts for the Western, Central, and Crossover Corridors.

Comment No. 4

In response to comments received on the DEIS, the Biological Assessments and Sections 3.3.2 and 4.3.2 of the Final EIS have been revised to present information on and evaluate habitat fragmentation from the proposed action. Information has been added to Section 3.3.6 of the EIS that discusses existing invasive species in the project area. Also, Section 4.3.6 has been revised in the Final EIS to acknowledge that an increase in invasive species could contribute to an increase in the number and intensity of wildfires in the area.

Regarding ecosystem recovery from construction impacts, Section 4.3.2 acknowledges that long-term impacts to vegetation tend to be more pronounced in arid areas such as the proposed project area where biological communities recover very slowly from disturbances.

Sections 3.12 and 4.12 of the EIS have been revised to provide more details on road closures and changes in road densities from the proposed project.

The Pajarita Wilderness, including Goodding Research Natural Area and Sycamore Canyon, is described in section 3.1.1. The impacts on Federally listed species found in Sycamore Canyon are discussed in section 4.3.3.1.

The potential impacts to special status species, including impacts to Federally listed species such as the jaguar, are addressed in Section 4.3.3. DOE initiated formal consultation under Section 7 of the *Endangered Species Act* (ESA) with the U.S. Fish and Wildlife Service (USFWS) to

State of Arizona Game and Fish Department
Page 5 of 6

AGFD Comments on TEP DEIS
October 10, 2003
3

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proposed project. Administrative roads would be closed using locked barricades; other roads would be closed using trenches or natural impediments, such as boulders. Additionally, portions of the road would be ripped and reseeded or revegetated. Closures would help limit some of the damage caused by creating additional roads, but they are not always effective. Arid ecosystems are slow to recover from disturbance, and these road scars would remain visible for many years. People often find a way around obstacles when they see a path they want to travel. The net effect of these proposed powerline corridors would likely be an increase in roads or footpaths within the Tumacacori EMA.

The proposed western corridor (Preferred Alternative) would cross within one mile of the Pajarita Wilderness, including Goodding Research Natural Area and Sycamore Canyon. Sycamore Canyon is known for its high vertebrate diversity; this area has been proposed as an Important Bird Area (National Audubon Society designation) due to its avian diversity, including many species that have limited distributions in Arizona. At least three federally listed species have been recorded in Sycamore Canyon. Additionally, the Department is currently considering re-establishing Tarahumara frogs in Arizona, and Sycamore Canyon is one of the proposed re-establishment sites.

The Draft Biological Assessment (Harris Environmental Group [HEG] 2003) for the Western Corridor determined that this route could potentially impact ten federally listed species, and would likely adversely affect five species (cactus ferruginous pygmy-owl, Chiricahua leopard frog, lesser long-nosed bat, Pima pineapple cactus, and Sonora chub). An additional 65 species listed as sensitive by the USFS, BLM, or the Department have the potential to occur in the corridor and could be affected by this activity. The proposed corridor will pass within one mile of two Mexican spotted owl Protected Activity Centers (PAC) and within 0.18 miles of a peregrine falcon 2002 nest at Castle Rock. Similarly, the crossover corridor could potentially impact nine federally listed species, and would likely adversely affect three species (Pima pineapple cactus, lesser long-nosed bat, and cactus ferruginous pygmy-owl; Draft Biological Assessment, HEG 2003). This route would pass within 0.6 miles of a Mexican spotted owl PAC. The central corridor could potentially impact seven federally listed species and would likely adversely affect the same three species as the crossover corridor (Draft Biological Assessment, HEG 2003).

The Atascosa and Pajarito mountains are areas of past jaguar sightings, including one documented in 2001 in California Gulch. This area has been identified as an important area for jaguar conservation in the United States and is a likely location for future jaguar sightings due to its remote and rugged nature and the presence of perennial and intermittent waters and springs. Jaguars are secretive animals and avoid areas with high human impact. Jaguar habitat is becoming more and more fragmented throughout its range, and conservation of this species will likely rely on protection of remote, rugged areas such as that found in the Tumacacori EMA. Activities such as construction of this proposed transmission line within remote areas would likely not be conducive to continued jaguar occurrence north of the Mexican border.

Comment No. 4 (*continued*)

address potential impacts to Federally listed species (see letters in Appendix A). In response to DOE's request for formal consultation on the Western Corridor (DOE's identified preferred alternative in the DEIS), the FWS provided a Biological Opinion on that alternative on April 26, 2004. The Forest Supervisor has advised DOE that the USFS had identified the Central Corridor (Option 1) as its preferred alternative. Thus, DOE has requested formal consultation under Section 7 on that alternative. That consultation has not yet been completed.

The Tarahumara frog is not listed under the ESA and, thus, is not afforded Federal protection. This species is, however, classified as a Wildlife of Special Concern in Arizona by Arizona Game and Fish Department (AGFD). It is considered to be extirpated in the United States. Impacts to Tarahumara frog by the proposed transmission line are expected to be similar to those described for the Chiricahua leopard frog (see Section 4.3.3).

The USFWS has completed an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) (USFWS 2004a and 2004b, respectively) for the proposed re-introduction of Tarahumara frog in portions of Sycamore Canyon. Therefore, the USFWS has decided to proceed with the re-establishment in Sycamore Canyon as proposed (USFWS 2004b). No date has, however, been set for the reintroduction.

The current USFWS protocol for cactus ferruginous pygmy-owl surveys requires that three surveys be conducted per year for two consecutive years. The protocol requires that the three surveys be completed between January 1 and June 30, with one of these three surveys being completed between February 15 and April 15. Survey areas within each of TEP's proposed corridors have been identified and approved by USFWS (USFWS 2004). TEP has contracted HEG to complete surveys during the 2004 cactus ferruginous pygmy-owl survey season and, therefore, could complete the surveys by June 30, 2005, at the earliest.

State of Arizona Game and Fish Department
Page 6 of 6

AGFD Comments on TEP DEIS
 October 10, 2003
 4

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All three proposed corridors pass through potential habitat for the cactus ferruginous pygmy-owl. The Department is currently tracking a pygmy-owl that dispersed from the Altar Valley to within several miles of Green Valley, not far from the proposed corridors. The potential for pygmy-owls to occur along all three corridors will necessitate surveys according to USFWS protocol prior to any vegetation disturbance.

The Department understands that TEP will implement mitigation measures proposed in the DEIS and Biological Assessments, and any additional measures required by the USFWS, to minimize impacts to federally listed species.

Other Concerns

Recreation

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The Tumacacori EMA is a popular destination for many recreationists, from hikers, birdwatchers, and photographers to hunters and OHV recreationists. As Arizona's population continues to grow and urban areas expand outward, remote natural settings will become less abundant, and increasingly valued by the citizens of southern Arizona. These areas provide relief and relaxation for an increasingly urban populace. Remote natural settings, such as the Tumacacori EMA, should be preserved from urban encroachment to the maximum extent possible so that these opportunities for enjoyment can be passed on to future generations.

Safety Issues

6

The Department conducts low-level flight surveys for game species in the Tumacacori EMA. Powerlines present a safety concern and make surveys logistically more difficult. If this transmission line were built within the CNF, the addition of aerial marker spheres would make them more visible and would help alleviate these concerns. These markers could also serve as a warning system for birds, thereby lowering the number of bird-powerline collisions.

Summary

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At this time, the Department does not support the Action alternatives because 1) the DEIS does not demonstrate the need for a 345-kV transmission line, 2) the proposed corridors would cause environmental damage to relatively pristine areas within the Coronado National Forest, and 3) TEP has not considered all reasonable alternatives, including those not within their jurisdiction (as required by CEQ regulations). Of the remaining alternatives that TEP has proposed, the western and crossover corridor would be the most damaging to the environment and wildlife resources. The eastern corridor, while also damaging, would follow or cross an established ROW for a longer distance than the other two alternatives, would not disturb as much land within the Tumacacori Ecosystem Management Area of the Coronado National Forest, and would not impact as many federally listed species.

Comment No. 5

Sections 3.1.2 and 4.1.2 present a description of existing recreational settings and activities and analysis of potential impacts to recreation from the proposed project. Section 4.1.2 specifically evaluates impacts to indicators such as remoteness and naturalness.

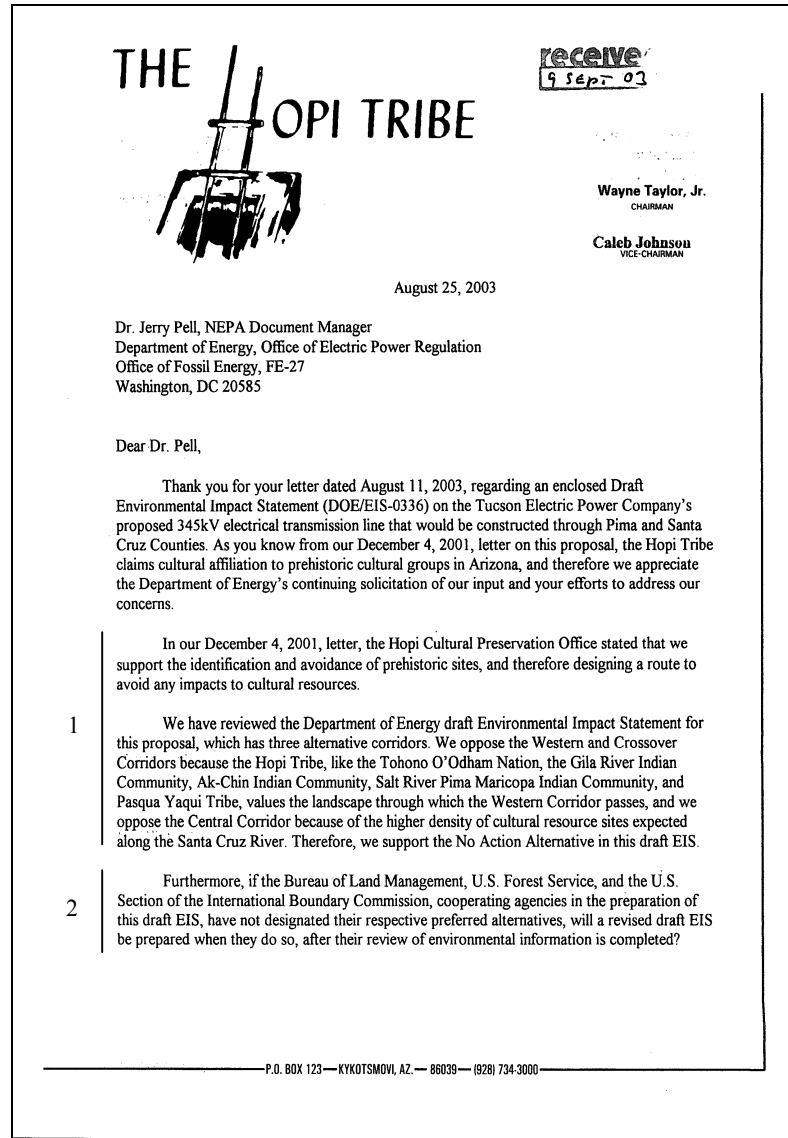
Comment No. 6

Although the area planned for construction within the Coronado National Forest is not flight-restricted, USFS is also concerned about potential flight hazards should a 345-kV transmission line be constructed. Section 2.2.6, Standard Mitigation, of the Final EIS was revised to include the following USFS mitigation measures to reduce the potential for flight hazards: (1) the transmission line would be included on the Forest Flight Hazard Map, which is provided to pilots working on USFS projects in the area, and (2) visual flight rules would apply in the area.

In addition, the Federal agencies conducted consultation with Federal Aviation Administration (FAA) (see Table 10-2 and Appendix A), and the FAA indicated that the only requirement would be to adhere to the State of Arizona statutes regarding tower construction. Table 2.2-2, TEP Mitigation Practices Included in the Proposed Action, measure number 7, reflects this requirement.

The suggestion by the commentor for visual markers to reduce the number of collisions of birds with transmission lines is acknowledged. However, balls would not help birds avoid the transmission lines, and they would reduce visual quality. Using the Forest Flight Hazard Maps would avoid potential safety impacts from the project on low-level flight surveys for game species in the Coronado National Forest.

The Hopi Tribe
Page 1 of 2



Comment No. 1

The Federal agencies recognize that many people value certain areas along the alternative transmission corridors and have a holistic concern for the natural beauty, undisturbed landscape features, abundant plant and animal wildlife, and cultural resources that characterize those areas. These unique natural characteristics give such areas their "sense of place," which includes the spiritual value that many people associate with these areas because of their cultural and religious significance. The Federal agencies recognize and appreciate this holistic sense of place and have revised the introductory sections of Chapters 3 and 4 of the Final EIS to acknowledge these values.

The agencies recognize that the natural and cultural characteristics that contribute to a sense of place cannot be measured in the same manner as some other resources in an environmental analysis. However, in order to analyze potential impacts effectively and document the analysis, it is necessary to consider the resource areas individually. Thus, the EIS discussions of affected environment in Chapter 3 and potential impacts in Chapter 4 are divided into distinct resource areas (e.g., visual resources, biological resources, cultural resources).

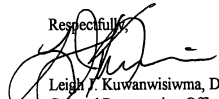
Section 4.4.2, Native American Concerns, and Table 2.3-1, Summary Comparison of Potential Environmental Effects of Alternatives, of the Final EIS have been revised to specifically identify the Hopi Tribe's preferences.

The Federal agencies are developing a Programmatic Agreement with the Arizona State Historic Preservation Office (SHPO), interested tribes, and TEP guiding the treatment of cultural resources if an action alternative is selected. Prior to ground-disturbing activities in any approved corridor, a complete on-the-ground inventory would be conducted by professional archaeologists in accordance with provisions of Section 106 of the National Historic Preservation Act (NHPA). Efforts to identify cultural resources would also include historical document research and continued consultation with Native American tribes regarding potential traditional cultural properties and sacred sites. Identified cultural resources would be evaluated in terms of National Register eligibility criteria and potential project effects in consultation with all parties who are participants in the Programmatic Agreement.

The Hopi Tribe
Page 2 of 2

Dr. Jerry Pell
August 25, 2003
Page 2

If you have any questions or need additional information, please contact the Hopi Cultural Preservation Office. Thank you again for your consideration.

Respectfully,

Leigh T. Kuwanwisiwma, Director
Cultural Preservation Office

cc: Dr. Louise Senior, SWCA
Forest Supervisor, Coronado National Forest
Arizona State Historic Preservation Office
Tehono O'odham Nation
Gila River Indian Community
Ak-Chin Indian Community
Salt River Pima Maricopa Indian Community
Pasqua Yaqui Tribe

Comment No. 1 (continued)

Wherever possible, power poles, access roads, and any other ground-disturbing activities would be placed to avoid direct impacts to cultural resources. A professional archaeologist would assist the pole-siting crew in avoiding impacts to cultural resource sites. In cases where avoidance of sites is not feasible, a site-specific Treatment Plan and Data Recovery Plan would be developed in consultation with tribes, the appropriate land-managing agencies, and the Arizona SHPO. These plans will include an appropriate Plan of Action to implement the Native American Graves Protection and Repatriation Act. A Discovery Plan would be developed to establish procedures to be followed in the event of discovery of unanticipated cultural resources, and a Monitoring Plan would address issues of site protection and avoidance.


If an action alternative is selected, cultural, biological, and visual resource specialists, would be involved in the final placement of the 125-ft (38-m) ROW within the 0.25-mi (0.40-km) wide study corridors, and the siting of the support structures within the ROW, to identify and minimize impacts to each area of land to be disturbed. This would occur after each agency has issued a ROD, as stated in Section 3.1.1. The required mitigation measures would be incorporated as part of each agency's ROD, or in the letter of concurrence in the case of the USIBWC.. These mitigation measures would address protection of cultural resources, based on the mitigation measures listed in Table 2.2-2, TEP Mitigation Practices Included in the Proposed Action.

Prior to construction in any approved corridor, cultural resources would be completely inventoried through additional studies and pedestrian surveys mandated by Section 106 of the NHPA.

Comment No. 2

DOE and the cooperating agencies have each identified their preferred alternative in Section 1.4 of the Final EIS, in compliance with NEPA implementing regulations (40 CFR Part 1502.14[e]), which only require the identification of each agency's preferred alternative in a Draft EIS if one or more exists, or, if one does not yet exist at the draft stage, in the Final EIS. Thus, the Draft EIS will not be re-issued for the purposes of identifying each agency's preferred alternative.

Tohono O'odham Nation
Page 1 of 2

<p>Vivian Juan-Saunders Chairwoman</p>	 OFFICE OF THE CHAIRWOMAN & VICE CHAIRMAN TOHONO O'ODHAM NATION P.O. Box 837 • Sells, Arizona 85634 Telephone (520) 383-2028 • Fax (520) 383-3379	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> received 10/28/03 </div> <p>Ned Norris Jr. Vice Chairman</p>
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October 13, 2003

Dr. Jerry Pell, Manager
 Office of Electric Power Regulation
 Fossil Energy, FE -27
 U.S. Department of Energy
 Washington, D.C.
 20585

Dear Dr. Pell:

Thank you for consulting with the Tohono O'odham Nation on the proposed Tucson Electric Power Company's 345 kV Sahuarita-Nogales Transmission Line and providing an opportunity to review the Draft Environmental Impact Statement (Draft EIS) prepared by the Department of Energy.

In a letter written to William Mundell, Chairman of the Arizona Corporation Commission on December 12, 2001, Edward D. Manuel, former Chairman of the Tohono O'odham Nation expressed serious concerns about the environmental impacts of the proposed transmission line corridors. These concerns have not changed.

While the Draft EIS makes an effort to address a wide range of environmental concerns, there remain many unanswered questions regarding impacts on cultural and natural resources.

The lands involved in these proposed transmission line corridors are the Traditional Use Lands of the Tohono O'odham Nation, recognized by the United States Indian Claims Commission. The Tohono O'odham Nation regards these lands as culturally sensitive since they contain many significant cultural sites including traditional cultural places, archaeological sites, sacred sites, religious sites, plant collection areas for basket materials and medicines and burial sites.

The Tohono O'odham Nation also has serious concerns about impacts to the cultural and natural landscapes and view sheds of the proposed transmission line corridors, including impacts to National Forest Lands, the Pajarita Wilderness Area, the Gooding Research

Comment No. 1

The Federal agencies recognize that many people value certain areas along the alternative transmission corridors and have a holistic concern for the natural beauty, undisturbed landscape features, abundant plant and animal wildlife, and cultural resources that characterize those areas. These unique natural characteristics give such areas their "sense of place," which includes the spiritual value that many people associate with these areas because of their cultural and religious significance. The Federal agencies recognize and appreciate this holistic sense of place and have revised the introductory sections of Chapters 3 and 4 of the Final EIS to acknowledge these values.

The agencies recognize that the natural and cultural characteristics that contribute to a sense of place cannot be measured in the same manner as some other resources in an environmental analysis. However, in order to analyze potential impacts effectively and document the analysis, it is necessary to consider the resource areas individually. Thus, the EIS discussions of affected environment in Chapter 3 and potential impacts in Chapter 4 are divided into distinct resource areas (e.g., visual resources, biological resources, cultural resources).

The Federal agencies are developing a Programmatic Agreement with the Arizona State Historic Preservation Office (SHPO), interested tribes, and TEP guiding the treatment of cultural resources if an action alternative is selected. Prior to ground-disturbing activities in any approved corridor, a complete on-the-ground inventory would be conducted by professional archaeologists in accordance with provisions of Section 106 of the National Historic Preservation Act (NHPA). Efforts to identify cultural resources would also include historical document research and continued consultation with Native American tribes regarding potential traditional cultural properties and sacred sites. Identified cultural resources would be evaluated in terms of National Register eligibility criteria and potential project effects in consultation with all parties who are participants in the Programmatic Agreement.

Wherever possible, power poles, access roads, and any other ground-disturbing activities would be placed to avoid direct impacts to cultural resources. A professional archaeologist would assist the pole-siting crew in avoiding impacts to cultural resource sites. In cases where avoidance of sites is not feasible, a site-specific Treatment Plan and Data Recovery Plan

Tohono O'odham Nation
Page 2 of 2

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cont.

Natural Area, the riparian zone in Sycamore Canyon and many unique and culturally important plant and animal species.

Two of the proposed transmission line corridors, the Western Corridor and the Western Corridor with the Peck Canyon Crossover will have significant impacts on the natural and cultural environment of the proposed project area. The proposed Central Corridor will have similar but less severe impacts.

2

The drawings accompanying this Draft EIS fail to show the transmission line between the United States and Mexico. Nowhere in the Draft Environmental Impact Statement are impacts of this proposed transmission line on Tohono O'odham villages in Sonora, Mexico addressed and evaluated. Nowhere in the Draft Environmental Impact Statement are cumulative impacts of the proposed transmission line corridors being used by illegal immigrants, smugglers and the law enforcement agencies trying to apprehend them, addressed and evaluated.

3

There are some concerns whether this proposed power line is necessary. The Maestros Group's Presidential Permit application for a proposed combined cycle, natural gas turbine power plant in or near the present Gateway Substation with 100 MW for Nogales, Arizona and 500 MW for Nogales, Sonora should be used in this analysis of various alternatives.

4

The South Substation is located near the Santa Cruz River, thus flooding is of some concern. The South Substation area contains various hazardous petroleum products including oil-filled equipment. If this area is expanded to accommodate the needs of the new transmission line and flooding should occur, hazardous materials could be washed into the Santa Cruz River and onto the lands of the San Xavier District of the Tohono O'odham Nation.

5

Tohono O'odham spiritual leaders regard large construction projects such as transmission line corridors that disrupt the space between significant cultural landmarks as being disrupting to the forces that hold the earth together.

1
cont.

The Tohono O'odham Nation values the cultural and natural landscape through which the proposed transmission line corridors pass. Therefore, the Tohono O'odham Nation recommends that the Department of Energy select the "No Action Alternative" in this Draft EIS and that Coronado National Forest, United States Forest not issue a special-use permit for the construction of this proposed transmission line.

Sincerely



Vivian Juan-Saunders, Chairwoman
 Tohono O'odham Nation

Comment No. 1 (continued)

would be developed in consultation with tribes, the, appropriate land-managing agencies, and the Arizona SHPO. These plans will include an appropriate Plan of Action to implement the Native American Graves Protection and Repatriation Act. A Discovery Plan would be developed to establish procedures to be followed in the event of discovery of unanticipated cultural resources, and a Monitoring Plan would address issues of site protection and avoidance.

The agencies recognize the Tohono O'odham Nation's concern about impact to cultural and natural landscapes and viewsheds. Sections 3.2 and 4.2 present analysis of the existing visual resources, and potential impacts to these visual resources for each alternative (including the areas cited by the commentor). Likewise, Sections 3.3 and 4.3 address biological resources, and Sections 3.4 and 4.4 address cultural resources.

Comment No. 2

The 345-kV transmission line that TEP proposes to construct would go just across the U.S.-Mexico border, where it would likely connect to another transmission line. The specific routing of the connecting transmission line between the U.S.-Mexico border and a new substation in the area of Nogales, Sonora, and the location of the new substation in Mexico have not yet been determined. Evaluation of potential environmental impacts in Sonora, Mexico, is not within the scope of the EIS.

As documented in Table 10-2 of the Draft EIS, the U.S. Border Patrol did not respond to DOE's solicitation of comments regarding the proposed project prior to publication of the Draft EIS, and therefore, the Draft EIS addressed in a general manner the potential impacts on illegal immigration and U.S. Border Patrol operations and the resulting environmental impacts.

In response to public comments, the Federal agencies again solicited comments from the U.S Border Patrol. Based on the U.S. Border Patrol's response (USBP 2004) to the Federal agencies' request, the Federal agencies have revised Sections 4.1, Land Use and Recreation; Section 4.12, Transportation; and Chapter 5, Cumulative Impacts of the Final EIS. The U.S. Border Patrol's response generally re-enforced the information on which the relevant analysis in the Draft EIS was based. The U.S. Border

Comment No. 2 (continued)

Patrol stated that the roads associated with the construction and maintenance of the proposed project would contribute to an increase in illegal immigrant and narcotic smugglers in the area and affect U.S. Border Patrol operations. The U.S. Border Patrol stated that although the proposed project would not create a single north-south route and roads would be closed or otherwise blocked, illegal immigrants and narcotic smugglers would be attracted to the area to use portions of the proposed access roads, resulting in a need for the U.S. Border Patrol to increase its presence in the Coronado National Forest.

For more information on the effects of illegal immigration, see *Report to the House of Representatives Committee on Appropriations on Impacts Caused by Undocumented Aliens Crossing Federal Lands in Southeast Arizona, April 29, 2002* (House 2002).

Comment No. 3

The EIS has been revised to include a more extensive explanation (in Section 1.2, Purpose and Need) of the roles of TEP and the Federal agencies in developing alternatives for the proposed project. In permit proceedings such as TEP's, where an applicant seeks permission for a specific proposed project to meet the applicant's specific purpose and need, the Federal agencies generally limit their review to alternatives similar to the one proposed, i.e., that is, alternatives that would meet the applicant's purpose and need. The agencies generally do not review alternatives that are not within the scope of the applicant's proposals. Similarly, the Federal agencies do not compel a permit applicant to alter its proposal or its purpose and need, but instead they decide whether a permit is appropriate for the specific proposal as the applicant envisioned it. It is not for the agencies to run the applicant's business or to compel an applicant to change its proposal: DOE evaluates the project as offered. Therefore, in an applicant-initiated process, the range of reasonable alternatives analyzed in detail is limited to those alternatives that would satisfy the applicant's purpose and need and that the applicant would be willing and able to implement, plus the no-action alternative. All of the alternatives analyzed in this EIS were either suggested by or similar to alternatives suggested by TEP.

This approach is particularly apt where, as here, the proposed action reflects a state's decision as to the kind and location of electrical infrastructure it wants provided within its boundaries. The ACC is vested with the authority to decide how it believes energy should be furnished within Arizona's borders, including the need for, the location of, and the effectiveness of transmission lines within its borders. See the discussion at Section 1.1.2 and 1.2.2 of the EIS with respect to the respective jurisdictions and authorities of the state and Federal agencies, and their relationship to this NEPA review. TEP's proposal has the dual purpose of addressing problems of electrical reliability in Santa Cruz County, Arizona, and crossing the border to eventually interconnect with the Mexican electrical grid. Alternatives that would not satisfy both elements of this dual purpose are not reasonable alternatives for the Federal agencies to consider in detail.

Thus, during the course of this NEPA review, the Federal agencies have considered alternative routes for TEP's proposed transmission line, but have not deemed feasible proposed alternatives that contemplate construction of power plants or transmission lines that differ in capacity from those that the ACC has directed TEP to construct.

As discussed in Section 2.1.5, a new power plant in Nogales is not a viable alternative to a new, second transmission line (part of TEP's proposal). Therefore, the alternative of a new power plant is not evaluated in detail in this EIS.

Comment No. 4

The proposed expansion of the South Substation would not be expected to: (1) raise the flood elevation in the surrounding area; (2) change flow patterns of the Santa Cruz River; nor (3) introduce significantly new hazardous material. TEP has completed a study to determine engineering measures that could be implemented to provide flood protection to the South Substation. (TEP 2002c). The results of that study indicate a variety of protective measures (ranging from reducing erosion with soil cement to building a structural concrete retaining wall) that can be implemented to better protect the South Substation from flooding. TEP would take appropriate measures to maintain the reliability of the electric transmission system.

Comment No. 5

Section 3.4.2.2, Cultural Concerns and Traditional Cultural Properties, has been revised to provide additional information about the Tohono O’odham Nation’s spiritual values and culture. The background document used in preparation of the EIS, *Tumacacori Uplands Ethnohistory and Traditional Uses Overview* (USFS 2002d) also discusses this topic, which is broad in both scope and area.

The issue of impacts to spiritual values is best considered under the American Indian Religious Freedom Act (AIRFA). Tohono O’odham representatives were consulted about a specific published passage regarding the effects of constructions (such as power lines) that disrupt the space between significant landmarks, and thus disrupt the forces that hold the earth together (quoted in USFS 2002d, SWCA 2002c). The issue of disruption of space must be considered from the standpoint of the American Indian Religious Freedom Act (AIRFA; Public Law 95-341, enacted in 1978), Executive Order 13007 signed in 1996, and the First Amendment to the Constitution of the United States of America.

AIRFA (Public Law 95-341), enacted in 1978 states:

. . . [H]enceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

Executive Order 13007, signed in 1996 states:

. . . In managing Federal lands, each Executive Branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2)

avoid adversely affecting the physical integrity of such sacred sites.

Executive Order 13007 includes definitions:

- “Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion;

provided that the tribe or appropriately authoritative representative of and Indian religion has informed the agency of the existence of such a site.

Sections 3 and 4 of the Executive Order address how it pertains to other uses of Federal lands:

- Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. (Section 3)
- This order is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person. (Section 4)

The Federal Reporter states that AIRFA “does not prohibit agencies from adopting land uses that conflict with traditional Indian religious beliefs or practices.” (708 Federal Reporter, 2d Series, page 736, Section 8) Executive Order 13007 is equally limited in effect, and in fact is more limited in scope; it defines “sacred site” as “any specific, discrete, narrowly delineated location” identified by an Indian tribe or authoritative representative of an Indian religion.”

Therefore, neither AIRFA nor Executive Order 12007 would require the selection of a “no action” alternative. The Supreme Court decision in *Lyng v. N.W. Indian Cemetery Protective Association*, also known as the “G-O Road”

Comment No. 5 (continued)

case, (485 US 439, 99 L Ed 2d 534, 108 S C 1319 [1988], page 548) is particularly revealing of the current legal interpretation of how Native American religious values must be considered and accommodated in agency decisions:

However much we might wish that it were otherwise, government simply could not operate if it were required to satisfy every citizen's religious needs and desires. A broad range of government activities – from social welfare programs to foreign aid to conservation projects – will always be considered essential to the spiritual well-being of some citizens, often on the basis of sincerely held religious beliefs. Others will find the very same activities deeply offensive, and perhaps incompatible with their own search for spiritual fulfillment and the tenets of their religion. The First Amendment must apply to all citizens alike, and it can give to none of them a veto over public programs that do not prohibit the free exercise of religion. The Constitution does not, and the courts cannot, offer to reconcile the various competing demands on government, many of them rooted in sincere religious belief, that inevitably arise in so diverse a society as ours.

Tucson Audubon Society,
Page 1 of 1

**TUCSON
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 SOCIETY**



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conservation
 education
 recreation

8 October 2003

Dr. Jerry Pell
 Office of Fossil Energy
 U. S. Department of Energy
 Washington, D. C. 20585

Dear Dr. Pell:

Tucson Audubon Society (TAS) does not support the preferred alternative for locating the "Tucson Electric Power Sahuarita-Nogales Transmission Line," and is concerned about the focus of the Draft Environmental Impact Statement (DEIS) for the line. None of the alternatives for locating the line is satisfactory, but the preferred alternative (i.e., the Western Route) is the worst, from the biological perspective of TAS. It is the longest and most expensive alternative, and likely will have the most negative impacts on an area prized for its primitive recreational opportunities and natural beauty. For example, the preferred alternative would require construction of at least 20 miles of new roads. Furthermore, according to analyses presented in the DEIS, placing the line along the preferred route has the most potential to do harm to sensitive plant and animal populations (i.e., 74 species; Tables S-1).

The most disturbing aspect of the Draft Environmental Impact Statement, however, is that alternatives to a 345 kV line were not considered. Can the needs of Santa Cruz County be met with a smaller, less obtrusive line (e.g., 115 kV line), or a locally run power plant? We request that a Supplemental Draft Environmental Impact Statement be written that analyzes alternative solutions to providing power to Santa Cruz County.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Sonja Macys
 Executive Director
 Tucson Audubon Society

Comment No. 1

The commentor's specific opposition to the Western Corridor and general opposition to all action alternatives is noted.

Comment No. 2

The EIS includes a description of the affected environment of the Western Corridor and analysis of the types of impacts cited by the commentor (see Section 3.3 and 4.3, Biological Resources; Sections 3.2 and 4.2, Visual Resources, and Sections 3.1.2 and 4.1.2). Table 2.3-1 provides a summary comparison of the potential environmental effects of the alternatives, including potential impacts to biological resources, recreation, and visual resources, and the road requirements for each alternative. In addition, Sections 3.1.2 and 4.1.2 present analyses of existing recreational settings and activities, and potential impacts to recreation from the proposed project. Section 4.1.2 states that the primary impact to recreation activities would be a change in the visual setting where recreation occurs, and specifically evaluates impacts to indicators such as remoteness and naturalness for the range of areas that are crossed by each proposed corridor. The commentor is also directed to Appendices D, E, F, and K (included in the CD-rom attached to this EIS) which contain the Final Biological Assessments and the Biological Opinion of the USFWS.

Comment No.3

As discussed in Section 2.1.5, a new power plant in Nogales is not a viable alternative to a new, second transmission line (part of TEP's proposal). Likewise, a smaller transmission line (e.g., 115-kV line) in lieu of the proposed 345-kV transmission line would not meet the international interconnection aspect of TEP's proposal. Therefore, these alternatives are not evaluated in detail in this EIS.

The Federal agencies believe the Draft EIS was prepared in accordance with Section 102(2)(c) of NEPA, the Council of Environmental Quality (CEQ) regulations (40 *Code of Federal Regulations* [CFR] Parts 1500-1508), and all other applicable laws and regulations. The Federal agencies do not think the Draft EIS needs to be recirculated for additional review.